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SUBJECT: 1267: U.S./UK BRAINSTORM OPTIONS FOR NEW RESOLUTION

¶1. SUMMARY: Ambassador Wolff and UK Deputy Perm Rep Parham informally discussed the challenges facing the 1267 al-Qaeda/Taliban sanctions regime and weighed the merits of the UK's proposal to establish an "independent review" panel to advise the 1267 Committee how to decide on requests from individuals and entities who want to be removed from the 1267 List. They also discussed the option of appointing a 1267 "Ombudsperson" who would have a mandate to assist the Committee in reviewing delisting requests but not to make recommendations to the Committee on whether to grant such requests (see para 4). Wolff and Parham agreed to share these thoughts with their respective capitals. END SUMMARY.

¶2. On October 5, Ambassador Wolff and UK Deputy Perm Rep Parham discussed informally the challenges facing the 1267 al-Qaeda/Taliban sanctions regime and how best to address them in the new 1267 resolution due to be adopted in December. Parham explained in greater detail the domestic legal challenges to the UK's implementation of the 1267 sanctions. The UK, he said, believed that the introduction of a mechanism for "independent review" (i.e., a panel that would review requests of individuals who want to be removed from the 1267 List and then make recommendations to the 1267 Committee on whether the requests should be granted) would go far to addressing a gap in fairness that has been identified by courts and critics. Wolff asserted that introducing independent review could impact the Security Council's primacy under the UN Charter and, in particular, risked undermining the Article 25 obligation of states to accept and carry out Council decisions.

¶3. Parham and Wolff noted that Austrian Perm Rep Mayr-Harting, chair of the 1267 Committee, had recently floated a poorly-defined proposal for an "Ombudsperson" for the 1267 regime. Wolff asked Parham whether it might be acceptable to London to have an Ombudsperson who would assist the Committee in reviewing delisting requests -- namely through compiling and analyzing information and facilitating dialogue between the Committee and the petitioner -- but would not have a mandate to issue recommendations for how the Committee should act. Parham agreed to consider the idea further. Wolff also underscored the need to include other reforms in the new resolution to improve fairness and transparency, such as to encourage Committee members to do better prior review of listings before agreeing to a new designation. U.S. and UK experts further refined these ideas (text at para 4) and agreed to share them with our respective capitals for review.

¶4. 1267 DISCUSSION DRAFT:

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1267 Successor Resolution --

## Brainstorming and Discussion Draft

### 1) OMBUDSPERSON

An appointed Ombudsperson would help ensure the interests of designees are more directly incorporated into 1267 Committee deliberations. The Ombudsperson would be empowered to facilitate substantive dialogue and information sharing between a person who wants to be delisted and the Committee and key states. He or she would compile and analyze information for the Committee's review and lay out the arguments both in favor of and against a delisting request. The Ombudsperson would not, however, issue recommendations for how the Committee should decide on the request.

The Ombudsperson would initially apply only to designees on the 1267 List, superseding the Focal Point for this regime only. In a later stage, its mandate could be expanded for all regimes.

#### OMBUDSPERSON MANDATE

Upon receipt of a delisting request, the Ombudsperson shall:

- a) Carry out administrative functions currently performed by the Focal Point (e.g., receive a petition, transmit it to the Committee and reviewing states), plus additional functions to facilitate the flow of information to the petitioner;
- b) Compile, with the support of the Monitoring Team, all available information about the case (e.g., news reports, court rulings, etc.) for the Committee's review;
- c) Facilitate dialogue among the petitioner, the Committee and designating state(s) and state(s) of residence/nationality, in order to:
  - i. Solicit from relevant states reasons for supporting or opposing the delisting, including possible actions the petitioner could take to strengthen the delisting request;
  - ii. Forward to the petitioner questions/requests for clarification from relevant parties.
  - iii. Based upon consultations with relevant states and the Committee, ask the petitioner to provide additional information/clarifications that may help the Committee's consideration of the request.
- d) Submit a report to the Committee that 1) summarizes all the available information, and 2) identifies principal factors for/against delisting;
- e) Answer Committee members' questions in meetings where the petition is discussed;
- f) Convey the Committee's decision to the petitioner, with an explanation for the decision;
- g) Upon request from a rejected petitioner, recommend that the chair place the delisting petition on the agenda of the Security Council for review concurrent with the Committee's next regularly-scheduled biannual report.

### 2) PROCEDURAL IMPROVEMENTS FOR INITIAL LISTING DECISIONS

- a) Decides that listing decisions shall be put to the Committee under a ten-day "no objection" deadline (instead of current practice of five days) to allow more thorough consideration by Committee members of new listings;
- b) Encourages all members of the Committee to share with the Committee any additional information they have regarding a pending designation.

c) Notes that the primary responsibility to ensure the appropriateness of new listings lies with the members of the Committee;

d) Requires that the statements of case submitted by designating states shall be publicly releasable, except for those parts of the statements of case that the designating state has identified as being confidential to the Committee;

e) Requires the Committee to approve a narrative summary of reasons for listing at the same time the Committee approves a new designation;

f) (Requests the Monitoring Team to propose to the Committee for its consideration minimum identifying criteria for listing (for eventual posting on the Committee's website).)

### 3) ENHANCED MONITORING TEAM ROLE

a) Requests that the Monitoring Team collect and present to the Committee all available information relevant to listing requests;

b) Decides that the following additional tasks shall be added to the Monitoring Team's mandate (note: some of these tasks could alternatively be assigned to an ombudsperson):

i. To bring to the Committee's attention new or noteworthy circumstances that may warrant a delisting (e.g., publicly-reported information on a deceased individual);

ii. To collate, assess, monitor and report this information, for the purpose of assisting the Committee's review and de-listing processes.

iii. To assist the Ombudsperson in his or her mandate to provide fact-based assessments, based on open-source information, of the accuracy, strengths and weaknesses of information provided in a delisting request;

iv. To propose to the Ombudsperson questions or requests for more information that the Committee may wish to address to a delisting petitioner via the Focal Point;

v. To further assist the Committee in its review and delisting procedures by undertaking travel and contact with member states and listed individuals and entities, with a view to developing the Committee's record of all the facts and circumstances relating to a listed individual or entity, in particular to assess the circumstances of reportedly decided individuals on the List.

c) Requests the Monitoring Team circulate to the Committee annually a list of individuals on the list who are reportedly deceased, along with information on the proof of death and the status of frozen assets, that shall include recommendations for the chair to submit to the Committee a delisting request for those names for which there is high confidence in the proof of death and low concern that unfrozen assets would be claimed by other extremists;

d) Requests the Monitoring Team to work with Member States to compile additional identifying information for listings;

e) Requests the Monitoring Team submit a report by 30 July 2010 on the outcome of the comprehensive review, highlighting the Committee's serious efforts and assembling statistics on retention/delisting;

### 4) OTHER COMMITTEE PRACTICES

a) Directs the Committee to amend its Guidelines so that Committee members may place on "hold" a Committee decision

for a period of no more than three months, renewable up to four times (i.e., one year), after which the hold shall automatically expire, and further encourages states to explain to the Committee the reasons why a hold has been placed;

b) Requires states that have placed "holds" on Committee delisting decisions prior to the adoption of this resolution to make a final decision within one year or else the matter will be brought for a vote of the Security Council to be held concurrent with the Committee's next regularly-scheduled biannual report.

c) Encourages the Committee to give due deference to delisting requests made by a designating state, state of residence or state of nationality/incorporation.

d) (Encourages designating states to agree to allow the Committee to inform the designee of their status as the designating state;) (NOTE: The UK strongly favors this provision, which they say stems from issues arising in domestic litigation. END NOTE).

e) Encourages states to answer promptly all Committee requests for information relevant to the one-time comprehensive review pursuant to resolution 1822, and further notes that all states should reply no later than 1 March 2010 so that the Committee can take their opinions into account in the completion of this review;

f) Clarifies that names shall be reviewed regularly by the Committee every (X) years from the date on which the Committee completed its one-time comprehensive review pursuant to resolution 1822;

g) Reaffirms that the payment of ransoms to designated individuals and entities constitutes a violation of the asset freeze provisions and is prohibited;

#### 5) ENHANCED FOCAL POINT TASKS FOR OMBUDSPERSON

a) In addition to the current tasks performed by the Focal Point, the Ombudsperson could also be authorized to:

i. Distribute information prepared by the Committee to petitioners about the process (e.g., Committee Guidelines, fact sheets, etc.).

ii. Share immediately incoming de-listing requests

with all members of the Committee (and not just designating states and states of citizenship/residence/incorporation).

iii. Transmit to the Committee a request from a petitioner for a humanitarian exemption to the asset freeze/travel ban (i.e., addresses situations where a state of residence/nationality is unwilling to make this request on behalf of a listed individual or entity).

//END TEXT//  
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